IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4861 OF 2005

Balu @ Mahesh Ramakant Sawant ... Petitioner

V/s

The State of Maharashtra ... Respondent

Mr. Nitin Pradhan with S.D. Khot for petitioner

Mr. D.P.Adsule,APP for the State

Coram : V.M. Kanade,J.

Dated : 15/04/2005.

P.C. :-

1 I have heard the learned counsel for the applicant and APP for the State.

2 This is a second application for bail filed by the applicant. The applicant's earlier application was rejected by V.K. Tahilramani, J. on 05/04/2003 on merits. Thereafter second application has been filed by the applicant.

3 It is submitted by the learned counsel for the applicant that he has been acquittal by the trial court in respect of offence which was registered against him. It is, therefore, submitted that in view of his acquittal, his

case would not fall under the definition of “continuing unlawful activity” as defined in section 2(d) of M.C.O.C.Act, 1999. The learned counsel for the applicant has also made submission on merits of the case that there is no evidence on record to indicate that the applicant is a member of organized crime syndicate and that he being the younger brother of Dadasaheb was only residing in his house.

4 The learned counsel has relied upon the judgment of the Supreme Court in the case of Ramjitsingh Brahmajeetsingh Sharma v. State of Maharashtra & Anr. (criminal appeal No.523 of 2005).

5 It is not possible to accept the submission made by the learned counsel for the applicant. So far as his first submission is concerned, even if the applicant has been acquitted from an offence with which he was charged, he would not come out of the purview of defination of section 2(d) of M.C.O.C.Act. The requirement is that 10 years prior of the Act coming into force there should be two more chargesheets filed against him as a member of organized crime syndicate.

6 The second submission of the learned counsel for the applicant also cannot be accepted as his earlier application was rejected on merits by this court by an order dated 05/04/2003 where in paragraph-8, this court has

observed after perusing the material on record that the the applicant is a member of organized crime syndicate. The ratio in the judgment in Sharma case in my view will not be applicable to the facts of the present case. Accordingly, criminal application is rejected.

(V.M. Kanade,J.)